

**REMARKS**

Applicant thanks the Examiner for conducting an in person interview on April 18, 2001 with Applicant's representatives Brian Whipps and Ronald Daignault. The pending rejections were reviewed in view of the cited art and pending claims. Applicant requests withdrawal of the finality of action, entry and consideration of the amendment submitted herein.

The new claims further clarify that the compounds are administered in an effective multi-drug resistant HIV strain reducing amount to a subject with an identified multi-drug resistant HIV strain.

Claims 7-17 are currently pending in this application.

**Rejections under 35 U.S.C. § 102(b)**

Claims 3 and 5-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by *Lind et al.* The Examiner asserts *Lind et al.*, inherently discloses prior use of the compounds for the same utility. Applicants disagree.

The new claims contain an element for identifying a multi-drug resistant HIV strain and an element for administering the compound in an amount sufficient to reduce the multi-drug resistant HIV strain amount. This non-prophylactic use removes *Lind et al.*, as an anticipatory reference. Withdrawal of the rejection is respectfully requested.

**Rejections under 35 U.S.C. § 103(a)**

Claim 3 and 5-6 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Lind et al.* The Examiner asserts that the patent of *Lind et al.*, teaches the compounds as useful for treating HIV as claimed. The Examiner further asserts that it is generally considered *prima facie* obvious to employ compounds taught as inhibiting viral replication as therapeutic for this same condition. Applicants disagree.

Applicants traverse that it is generally considered *prima facie* obvious to employ compounds taught as inhibiting viral replication as therapeutic for this same condition and request the Examiner to cite a reference to support the position in accordance with MPEP 2144.03.

The Examiner has not established a *prima facie* case of obviousness. Applicant submits that *Lind et al.*, does not disclose or suggest the claimed method. Further, there is no suggestion or motivation, either in the reference or in the knowledge generally available to one of ordinary skill in the art at the time of filing, to modify the reference. Further still, there is no reasonable expectation of success to treat multi-drug resistant HIV by modifying the reference teachings.

Clearly, *Lind et al.*, does not disclose or suggest the treatment of multi-drug resistant HIV. The Examiner does not even contend this.

The Examiner has provided no motivation to modify *Lind et al.*, to suggest treatment of multi-drug resistant HIV. The Examiner has provided no reasonable expectation of success to modify *Lind et al.*, to suggest treatment of multi-drug resistant HIV.

The claimed methods require identifying viral strains that have been mutated after therapy of conventional anti-HIV agents. Applicants' data Table 2 illustrates that conventional anti-HIV agents are ineffective against multi-drug resistant HIV. Thus, motivation to modify *Lind et al.*, to suggest treatment of multi-drug resistant HIV and an expectation of success that such treatment would be effective, does not exist.

Withdrawal of the rejection is respectfully requested.

Therefore, for at least these reasons, claims 7, 9-12 are patentable over the cited reference. The claims dependent from claims 7, 9-12 further distinguishes the independent claims from the cited reference. Favorable reconsideration is requested.

CONCLUSION

The pending dependent claims recite additional features that further distinguish these claims from the cited references. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences pointed out above.

In view of the above, Applicant respectfully requests withdrawal of the rejections and allowance of the claims. Prompt passage to issue is earnestly solicited. Should the Examiner feel a telephone interview would be helpful in advancing this case to allowance, Applicant invites the Examiner to contact their representative at the number listed below.

Respectfully submitted,

MERCHANT & GOULD P.C.  
P.O. Box 2903  
Minneapolis, Minnesota 55402-0903  
(612) 332-5300

Dated: 6-18-01

By: 

Brian C. Whipps  
Reg. No. 43,261

